IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 187 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAISHIBHAI KARSHANBHAI VARVA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.

Mr.M.K.Patel, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his detention order dated 17.12.2002, by which he is detained under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. Along with the detention order,

he is served with the grounds of detention. In the said grounds, the activities of the petitioner are highlighted. It is alleged against the petitioner that, on receiving certain information, the premises of the petitioner was inspected by the Department and, at that time, he was caught red-handed while he was pouring some extraneous material into the diesel tank. It was found that he has tried to sell away certain quantity of diesel illegally and accordingly, he has also committed breach of Condition No.4 of the Licence, which is issued to him. On the said grounds, the detention order is passed by the detaining authority, which is impugned in this petition.

Learned Advocate for the petitioner submitted that there is a delay in deciding the representation of the petitioner. It is argued on behalf of the petitioner that a relative of the petitioner made a representation to the detaining authority on 7.1.2003, which was, ultimately decided by the State Government on 29.1.2003. It is submitted that there is a delay in deciding the said representation and on that ground, order of detention is required to be set aside.

It is required to be noted that the Detaining Authority has not filed any affidavit-in-reply at all, controverting the averments made in the petition. On behalf of the State, the said delay is tried to be explained in paragraph 5 of the reply. In paragraph 5, it is stated as under :-

> " ... ...
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> 5. With reference to Grounds (g), (h), and (i) of the petition, I deny the contentions and averments made by the petitioner/detenu in this paras. I say and submit that representations which was received by the State Government was considered and was duly rejected and the same was communicated to the petitioner/detenu accordingly. I say that the representation dated 7.1.2003 made by relative of the detenu addressed to the Detaining Authority, which was received by the Office of Detaining Authority on 15.1.2003. I say that Detaining Authority has forwarded the said representation on 22.1.2003 to the State Government, Central

Government as well as Secretary, Advisory Board. I further say and submit that the said representation was received in the Special Branch of Food, Civil Supplies & Consumer Affairs Department on 27.1.2003. I say that the file of the said representation was prepared by the Special Branch on 28.1.2003 and was placed before the Section Officer, Under Secretary and Deputy Secretary. All the Officers cleared the said file of representation on the same day i.e. on 28.1.2003. I say that thereafter the file was placed before the Hon. Minister on 29.1.2003 who decided to reject the representation on 29.1.2003 and as the file was received back on 30.1.2003, the detenu was informed about the rejection of the representation by a letter dated 30.1.2003 through Jail Authority. In view of the above facts, it is amply clear that there is no unreasonable or undue delay in consideration of representation.

... ..."

It is required to be noted that, in such a serious matter, the detaining authority has not filed any reply, controverting the averment about delay and the State has merely stated that the representation dated 7.1.2003 was received by the office of the detaining authority on 15.1.2003 and that the detaining authority has forwarded the same on 22.1.2003. There is no explanation as to why the said representation was kept by the detaining authority from 15.1.2003 upto 22.1.2003. There is no explanation worth the name in this connection. Even there is no proper explanation for the time taken between 22.1.2003 and 27.1.2003, except stating that the said representation was sent to some Special Branch of the Food, Civil Supplies and Consumer Affairs Department on 27.1.2003. The law on this point is now known to every one that representation is required to be dealt with promptly and appropriate explanation is required to be given in case there is a delay in deciding the said representation. The Detaining Authority, as stated above, has not filed any reply, pointing out as to

why the said representation was kept pending from 15.1.2003 to 22.1.2003.

In the instant case, even though the petitioner was caught red handed, the Authority has not found it fit to suspend his licence or cancel his licence, meaning thereby, he is permitted to continue his business of distributing diesel even though he is found to have indulged in black marketing activity in the matter of such distribution. Even ordinary prosecution is also not launched. The facts of the case reflect that the authority is not serious in preventing such black-marketing activities. In the instant case, even though strong prima facie material was available with the authority, as the petitioner was caught red-handed at the relevant time, at the time of pouring some extraneous material into diesel, yet, the matter was not dealt with promptly. Apart from the aforesaid fact, even there is a delay in forwarding the representation of the petitioner. Further, the District Magistrate has not filed any reply, explaining the aforesaid delay in despatching the representation to the State Government. Apart from the aforesaid aspect, even the State has not taken appropriate care for launching even an ordinary prosecution or taking steps for cancelling or suspending the licence.

The petition is, therefore, required to be allowed on the ground of delay in deciding the representation and for not explaining the delay between 15.1.2003 and 22.1.2003 at the hands of the Detaining Authority, since there is no explanation worth the name on record.

On the aforesaid ground, this petition is allowed, accordingly. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

12th March, 2003 (P.B. Majmudar, J.)

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(apj)